IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 10214 of 1998

Between:

Sankati Panduranga Rao, S/o China Raghavaiah,
Sreeramnagar, Guntur District

..... PETITIONER

AND

1. Chairman, Special Court under A.P. Land Grabbing

(Prohibition) Act at Hyderabad.
2 Chairman, Special Tribunal under A.P. Land Grabbing

(Prohibition) Act, (District Judge), Guntur District.
3 The Revenue Divisional Officer,
Guntur District.
4 Konatam Nagakoteswara Rao, S/o. Subrahmanyam,
Kothapet, Guntur District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue order or writ more particularly a writ in the nature of Certiorari to call for the records and to quash the Judgment passed in L.G.A.No.22/97 Dt: 19-2-1998 of the Special Court under A.P.Land Grabbing (Prohibition) Act, at Hyderabad.

For the Petitioner: MR.M.V.DURGA PRASAD, Advocate.

For Respondent Nos. 1 to 3: GP FOR REVENUE.

For Respondent No. 4: Mr. M.V.S. Suresh Kumar, Advocate.

The Court made the following Order: (per Sri B. Sudershan Reddy, J)

The 4th respondent in this writ petition filed L.G.O.P No. 3 of 1990 on the file of the Special Tribunal-cum-District Judge, Guntur against the writ petitioner herein seeking his eviction from the petitioner schedule property admeasuring 490 square yards situated within the limits of Guntur Municipality. The case set up by him is that the petition schedule property was purchased by his father Konatham Subrahmanyam from one Kalangi Pulla Rao in the year 1943 and since then he has been in possession and enjoyment of the same and after the death of his father he came into possession of the same. The simple case set up by him is that the writ petitioner herein has encroached upon the petition schedule property in the year 1983. Having realized the same, he has applied to the Commissioner, Guntur Municipality to demarcate the petition schedule property and a town surveyor was deputed by the Municipality to demarcate the petition schedule land and upon such demarcation, it was found that the writ petitioner encroached upon the petition schedule land and raised a temporary structure. That a lawyer's notice dated 10.12.1984 was issued requiring the petitioner herein to vacate the same and deliver vacant possession of the schedule property for which no reply was issued. It is under those circumstances, the 4th respondent filed the said L.G.O.P under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') for declaration of his title to the petition schedule property and for declaring the writ petitioner herein as a land grabber and for recovery of the petition schedule property.

The petitioner herein resisted the application and inter alia contended that he purchased the property under a registered sale deed Ex. B-1 dated 16.7.1969 and the property in his possession which he purchased under Ex. B-1 is totally different and has nothing to do with the petition schedule property. He denied that he has encroached upon the petition schedule land.

The 4th respondent herein examined himself as P.W 1 and got marked Exs. A-1 to A-14 in support of his case. The writ petitioner himself got examined as R.W 1 and also examined one D. Sambasiva Rao as R.W 2 and marked Exs. B-1 to B-102 on his side.

The Special Tribunal upon consideration and appreciation of the entire material available on record dismissed the petition holding that the 4th respondent miserably failed to establish his title to the petition schedule land and the writ petitioner established that the property purchased by him under Ex. B-1 and his predecessor in title has nothing to do with the property purchased by the 4th respondent's predecessor in title. On all counts, the Tribunal held against the 4th respondent herein.

The 4th respondent herein filed L.G.A No. 22 of 1997 before the Special Court under the Act. The Special Court upon re-appreciation of the evidence held the petitioner herein to be a land grabber and accordingly, ordered his eviction from the petition schedule property. It is that order which is challenged in this writ of Certiorari.

Sri M.V. Durga Prasad, learned counsel for the petitioner contended that the findings recorded and the conclusions reached by the Special Court are based on no evidence and therefore, the Judgment of the Special Court is vitiated by the errors apparent on the face of the record. Learned counsel contended that the appellate Court adopted a peculiar procedure in order to identify the petition schedule property by relying upon the statement prepared by the counsel during the course of hearing of the appeal. Reliance upon the said statement prepared by the counsel resulted in erroneous decision. The whole dispute centers around the identification of the property and in such view of the matter, the issue could have been decided only based on the evidence and not on the self-serving statement filed into the Special Court for the first time without there being any basis whatsoever.

Learned counsel for the 4th respondent submitted that even if that statement is to be ignored, there is any amount of evidence available on record to hold the petitioner to

be a land grabber. Learned counsel mainly relied upon Ex. A-3 dated 20.12.1984 being a notice issued on behalf of the 4th respondent requiring the petitioner herein to vacate the encroached portion of the land to which no reply was given by the petitioner. Reliance was also sought to be placed upon sketch Ex. A-2 stated to have been prepared by the Municipal Surveyor.

We have given our anxious consideration to the rival submissions made during the course of hearing of the writ petition.

Be it noted, the genuineness of Ex. B-1 dated 16.7.1969 under which the petitioner purchased the land admeasuring 123 2/3 square yards is not put in issue. The petitioner herein asserts his right, title and interest in that land which he purchased under Ex. B-1 admittedly for a valuable consideration from his predecessor in title. We are also required to note that the 4th respondent herein purchased land admeasuring 450 square yards under a registered sale deed Ex. A-1 dated 21.6.1943 about which no dispute is raised by the writ petitioner. This singular fact itself reveals that the dispute between the writ petitioner and the 4th respondent is mainly with regard to identity of the property alleged to have been encroached by the writ petitioner. The 4th respondent in his O.P did not state as to what is the extent of the land alleged to have been encroached by the writ petitioner herein. However, an attempt is made by the learned counsel for the 4th respondent to contend that the writ petitioner has encroached into the whole of 450 square yards purchased by the father of the 4th respondent under Ex. A-1 dated 21.6.1943.

It is an admitted fact that one K. Pulla Rao purchased larger extent of Ac.1.11 cents of land under Ex. A-6 dated 4.3.1943. The said Pulla Rao having purchased the said land is alleged to have divided the entire land purchased by him into nine plots and sold away to different persons.

The Special Court in order to consider and decide as to whether the petitioner grabbed any land belonging to the 4th respondent relied upon a statement prepared

by the learned counsel for the 4th respondent and filed into the Special Court for the first time. According to the statement so prepared by the learned counsel for the 4th respondent, plot No. 1 shown in the statement was sold under Ex. A-1 dated 21.6.1943 to the father of the 4th respondent. The property which was sold under Ex. A-9 by K. Pulla Rao is noted for the convenience sake as plot No. 4, which according to the Special Court is the property belonging to the predecessor in title of the writ petitioner. We are rather surprised that the Special Court could have adopted such a procedure in order to establish the identity of the property of the writ petitioner as well as the 4th respondent by placing reliance upon a self-serving statement prepared by the counsel appearing on behalf of the 4th respondent. It is observed by the Special Court " we have gone through the statement very carefully, the recitals and boundaries of the respective sale deeds, and we are of the opinion that the statement prepared reflects the true position and that makes it very easy for the court to understand the topography and to trace the title to the respective plots. We can easily trace the title of the respondent to plot No. 4 as indicated in the statement. Sri K. Pulla Rao sold the property under Ex. A-9 (for easy reference, referred as plot No. 4) to Smt. S. Annapurna, who in her turn sold the very same property under Ex. A-15 dated 16.4.1944 to one G. Bala Krishna Murthy. The said Balakrishna Murthy sold the very same property under Ex. B-3 dated 30.4.1947 to one Nayudu Mastan, who, in turn, sold under Ex. B-2 the same property on 6.1.1961 to one Smt. Kamakshamma and Smt. Mahalakshmamma. After the death of Mahalakshmamma, her son and Smt. Kamakshamma sold the southern half of the property covered under Ex. B-2, under Ex. B-1 dt 16.7.69 to the respondent". These findings which are based on a self-serving statement prepared by the counsel for the 4th respondent cannot be equated to that of any findings based on evidence. The finding which is not based on evidence is a perverse finding in law.

The statement prepared and filed by the counsel into the Court is inexplicable and pervades all through the judgment and therefore, every finding recorded by the Special Court is influenced by the Statement so prepared and filed by the counsel. The procedure adopted by the Special Court for disposal of the appeal is totally untenable and unsustainable and therefore, not acceptable to us. The right, title and interest of the immovable properties cannot be adjudicated with reference to the statements prepared by the counsel and filed into the Court. The whole dispute

centers around the identity of the property. Each one of the parties are asserting their right, title and interest in specified properties purchased under Ex. A-1 dated 21.6.1943 and Ex. B-1 dated 16.7.1969. In fact, it is the case of the writ petitioner that he has nothing to do with the property purchased by the 4th respondent's father under Ex. A-1 based on which the 4th respondent asserted his right, title and interest in the petition schedule property. The crucial question that is required to be considered is whether the petitioner herein grabbed any land belonging to the 4th respondent herein who is asserting his title based on Ex. A-1 sale deed dated 21.6.1943. The Special Court misdirected itself to resolve that issue by relying upon the self-serving statement prepared by the counsel and filed into the Court for the first time. The statement so prepared and filed cannot be equated to that of any evidence by any stretch of imagination.

For the aforesaid reasons, we find it very difficult to sustain the impugned judgment of the Special Court. At the same time, we are not inclined to examine the issue on merits and record our own findings since such a course is impermissible for this Court in exercise of its Certiorari jurisdiction.

For the aforesaid reasons, the impugned judgment is quashed. Be a writ of Certiorari issued accordingly. The matter is remitted for fresh consideration by the Special Court in accordance with law. It is needless to direct the Special Court not to place any reliance whatsoever upon the statement prepared and filed into the Court by the counsel for the 4th respondent. That statement shall be completely ignored. We accordingly hold that the statement so filed shall not form part of the record.

The Special Court now shall frame an appropriate point for its consideration in the light of the observations made in this order and dispose of the appeal after providing an opportunity of hearing to both the parties.

The Writ Petition is accordingly allowed. No order as to costs.

(B. Sudershan Reddy, J)

01..10..2004

(K.C. Bhanu, J)

ks

Rule nisi has been made absolute. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the First day of October, Two Thousand and Four.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Chairman, The Special Court under A.P. Land Grabbing (Prohibition) Act at Hyderabad.

2. The Chairman, Special Tribunal under A.P. Land Grabbing (Prohibition) Act, (District Judge), Guntur District.

3. The Revenue Divisional Officer, Guntur District.

4. Two CCs to the Government Pleader for Revenue, High Court of Andhra Pradesh, Hyderabad (OUT).